UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,495	06/28/2001	Shinichi Yamada	057250903	5364

22852 7590 09/17/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER	
YU, GINA C	

ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
09/17/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/857,495	YAMADA ET AL.	
	Examiner	Art Unit	
	GINA C. YU	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *May 18, 2010 and July 14, 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-29,31-60,62-68,70-78 and 80-82* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-29,31-60,62-68, 70-78 and 80-82* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 18, 2010 has been entered.

Claims 19-29, 31-60,62-68, 70-78 and 80-82 are currently pending.

All claim rejections indicated in the previous Office action dated February 18, 2010 are withdrawn in view of applicant's claim amendment submitted on May 18, 2010.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19-29,31-60,62-68, 70-78 and 80-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maubru (US 6312674 B1) in view of Ochiai (US 5587155), Flick (Cosmetic and Toiletry Formulations, 1995) and von Mallek (US 5888489 A).

The broadest claim in the present application is claim 19, which is directed to liquid composition comprising at least one ceramide, at least one liquid fatty alcohol, and at least one cationic surfactant in a cosmetically acceptable medium, wherein the at least one fatty alcohol contains “no more than one hydroxyl group”, and wherein the

composition has a viscosity of less than or equal to 1000 cPs. Claim 19 also limits the at least one fatty liquid alcohol to be present in an amount ranging from 1.5-10 % by weight of the composition and is the only fatty liquid alcohol present in the composition. The same claim further requires the at least one fatty alcohol to be selected from the Markush group recited in lines 9-11.

Maubru teaches an oxidizing composition for bleaching or permanent reshaping hair, wherein the composition comprises ceramides disclosed in col. 3, line 21 – col. 5, line 13 which is effective in limiting or preventing "deterioration in the mechanical properties of the hair", particularly breaking of the hair and to obtain beautiful curls that withstand blow-drying and have good hold". See col. 1, line 38 – col. 2, line 10. The specific compounds of instant claim 25 are disclosed in col. 4, lines 39 – 49 of the prior art, and the reference specifically teaches bis(N-hydroxyethyl-N-cetyl)malonamide and 2-N-oleoylaminooctadecane-1,3-diol. See col. 5, lines 1 – 16. See instant claims 20-26. The reference also teaches using the ceramide(s) in an amount ranging from 0.005 to 10 wt %, preferably from 0.01% to 5 %. See col. 5, lines 13-16; instant claims 27-29. Adding cationic compounds as a cosmetic additive is also suggested. See col. 5, lines 54 – 58. The reference further teaches that the invention may contain other additives that are "known for their use in oxidizing compositions for bleaching or permanent reshaping of the hair". Since the reference teaches that the composition may be in the form of lotion which may or may not be thickened, a low viscosity composition is also envisioned by Maubru. See col. 5, lines 44 – 45. It is noted that the oxidizing composition is used in "fixing step" in the permanent waving/straightening process. See

col. 1, lines 1-29. The reference teaches that the oxidation composition may be optionally rinsed, meeting the method step of instant claim 64. See col. 2, lines 43-54. The presently claimed process of treating keratinous materials is necessarily practiced when the composition is used according to the teaching in the prior art.

Maubru fails to disclose 1) at least one cationic surfactant and 2) the specific branched liquid fatty alcohol. The reference also fails to provide the viscosity of the prior art compositions.

Ochiai teaches a hair treatment composition comprising at least one fatty acid containing a linear or branched alkyl or alkenyl group having C12-C40 or a fatty acid ester thereof; (b) at least one aromatic alcohol of formula (I) which optionally has branched radical(s); and (c) at least one cationic surfactant. The quaternary ammonium salts of the instant claims are taught in col. 3, line 36 – col. 5, line 51. See instant claims 35-51, 62, 63, 70, 71, 80 and 81. The reference teaches a hair-conditioning composition comprising 18-methyleicosanoic acid of instant claim 55. See Table 3; Example 7. Ochiai teaches that the prior art composition prevents hair damage and adds resilience to the hair, and renders moisturizing and hair conditioning effects. col. 1, line 54 – col. 2, line 54. See col. 7, lines 36 – col. 8, line 60 for the application of the invention, which include hair conditioners, setting lotions and sprays, permanent wave compositions and hair dye compositions.

Flick teaches a hair liquid formulation having a viscosity of 6 cps. See p. 65, Hair Liquid. The formulation contains 1 % of 2-hexyldecyl alcohol, which is a liquid branched fatty alcohol with one OH group. See instant claim 33. Varying the weight amount of the

fatty alcohol to find an optimum weight range would have been within the skill of the art. See instant claim 34.

Although Flick does not expressly disclose the utility of 2-hexyldecyl alcohol, von Mallek teaches this fatty alcohol is an emollient well known in hair care art at the time of the present invention. Von Mallek teaches conditioning shampoo compositions that employ as an emollient component fatty alcohol or fatty alcohol derivatives. The reference also teaches the emollient fatty alcohols are used in an amount ranging from about 0.5 to about 2.0 % by weight of the composition. See instant claim 34. The reference teaches the particularly preferred are Geurbet alcohols such as 2-hexyl decanol, 2-octyl decanol, 2-hexyl dodecanol, and 2-octyl dodecanol, which are branched liquid fatty alcohols with one OH group. Since von Mallek teaches 2-hexyl decanol and 2-octyl dodecanol of instant claim 30 are art-recognized functional equivalents, substituting one emollient for the other to make a similar hair care product would have been an obvious choice to a skilled artisan.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the hair treatment composition of Maubru by incorporating to the composition the hair conditioning agents such as quaternary ammonium salt and the fatty acid of Ochiai. The skilled artisan would have been motivated to do so as 1) both prior arts are directed to hair treatment compositions that protect and condition hair, and 2) Ochiai teaches the hair care composition comprising these hair conditioning agents provide hair protection, moisturizing, and conditioning effects. Since Ochiai teaches its hair conditioning agents are suitable for permanent wave compositions or dye

compositions, the skilled artisan would have had a reasonable expectation of successfully modifying and improving the Maubru invention and produced an oxidizing hair treatment composition with enhanced hair protection and conditioning effects.

It would have been also obvious to the same skilled artisan to incorporate to the Mauru composition a liquid fatty alcohol having one hydroxyl group such as 2-hexyl decanol as motivated by Flick and von Mallek because 1) Maubru is concerned with hair conditioning effects of the treatment composition; 1) Flick exemplifies a specific hair treatment liquid product which utilizes 2-hexyl decanol; and 3) von Mallek teaches the fatty alcohol of the Flick formulation is a well known hair emollient. Since Maubru teaches to make fluid or liquid compositions, and Flick teaches a hair liquid product comprising a liquid fatty alcohol, by combining the teachings of the references the skilled artisan would have had a reasonable expectation of successfully producing a liquid composition that enhanced hair conditioning effect and has a suitable viscosity for application to the hair.

Response to Arguments

Applicant's arguments with respect to claims 19-29, 31-60, 62-68. 70-78 and 80-82 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605.

The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fereydown G. Sajjadi can be reached on 571-272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1617